



PUBLIC NOTICE

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UPDATED TOWER CONSTRUCTION GUIDANCE FOLLOWING THE DELAY IN THE RECLASSIFICATION OF THE NORTHERN LONG-EARED BAT AS ENDANGERED UNDER THE ENDANGERED SPECIES ACT

On January 24, 2023, the Wireless Telecommunications Bureau (Bureau) of the Federal Communications Commission (Commission) issued updated instructions to the tower industry for considering the potential effects that proposed facilities could have in the northern long-eared bat's (*Myotis septentrionalis*) range as part of an applicant's environmental review.¹ On November 29, 2022, the U.S. Fish and Wildlife Service (Service) announced a final rule to reclassify the northern long-eared bat from being listed as threatened to being listed as an endangered species under the Endangered Species Act (ESA), effective January 30, 2023.² On January 26, 2023, the Service announced that it is delaying the effective date of the final rule to March 31, 2023.³ The Service stated that delaying the effective date's implementation will allow the Service to "finalize conservation tools and guidance documents, thereby preventing confusion and disruption with other Federal agencies under section 7 of the Act."⁴

With this guidance, the Commission informs applicants of this delay in the effective date of the Service's final rule. In light of this delay, and until the Service's final rule becomes effective, applicants should continue to follow the Commission's prior guidance for protection of the northern long-eared bat issued on December 2, 2021.⁵ When the Service's final rule becomes effective, we direct applicants to consult with the Service's resources⁶ and the applicant's respective field Service office⁷ to determine how to proceed with the consultation process for projects that are proposed or in pre-construction status as of that date.

¹ *Updated Tower Construction Guidance Following the Reclassification of the Northern Long-Eared Bat as Endangered Under the Endangered Species Act*, Public Notice, DA 23-63 (WTB 2023).

² Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat, 87 Fed. Reg. 73488 (Nov. 30, 2022) (*Final Rule*).

³ Service, Endangered and Threatened Wildlife and Plants; Endangered Species Status for Northern Long-Eared Bat; Delay of Effective Date, 88 Fed. Reg. 4908 (Jan. 26, 2023).

⁴ *Id.*

⁵ *Revised Tower Construction Guidance for Protection of Northern Long-Eared Bat under the Endangered Species Act*, Public Notice, DA 21-1501 (WTB 2021).

⁶ See Service, *Northern Long-eared Bat*, <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis> (last visited Jan. 26, 2023) (providing resources on the transition, including a Frequently Asked Questions and webinar slides).

⁷ See *Final Rule*, 87 Fed. Reg. at 73494 ("If any private entity is concerned that they may be engaging in an activity that will result in take of a northern long-eared bat, they should coordinate with their respective Service field office.").

The Commission expects to update the tower industry with instructions once the Service provides further information on its final rule and related tools and guidance.

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